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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 52570

ANDREW GALICH, individually, and on behalf of the SACRED HEART SAVE OUR SHRINE COMMITTEE, INC.,

Petitioners,

vs.

THE CATHOLIC BISHOP OF CHICAGO, a corporation sole,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

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Respondent, The Catholic Bishop of Chicago, respectfully requests that this Court deny the Petition For Certiorari, seeking review of the Illinois Appellate Court, First District's opinion in this case. That opinion is reported at 394 N.E.2d 572 and reproduced in the appendix to petitioners' Petition For Certiorari at 1(a).

QUESTION PRESENTED

Whether petitioners, who have no property right in a church building under Illinois law, can overrule the decision of a Bishop of a hierarchical religious denomination and the fee simple owner of the property to close the building.

STATEMENT

Closing a church is not easy. Years of memories and the fellowship of Christian worship stir strong emotions in parishioners for their church. But from time to time, the Catholic Bishop of Chicago, just as any other bishop or religious leader, must confront the difficult and distasteful decision to close a church. Unfortunately, Sacred Heart Church is not the first and will not be the last. But the Bishop must provide the maximum pastoral care to the most Catholics in the Archdiocese of Chicago. This task is becoming even more difficult as fewer Catholics become priests, resources shrink, and double-digit inflation rages.

Before the trial court, the Illinois Appellate Court and the Illinois Supreme Court, petitioners raised a flurry of arguments to overrule the Bishop's decision to close Sacred Heart. But petitioners cannot escape the fact that their amended complaint seeks a civil court order commanding the Catholic Bishop of Chicago to maintain Sacred Heart Church as a church and to appoint a "qualified priest or pastor" for that purpose. (*See* Prayers for Relief, C at 12, 14-16) As the Illinois

Appellate Court so rightly put it, petitioners are asking a civil court to substitute "... its decision on the spiritual needs of the area for that of the bishop, and [to order] him to maintain the church." (Cert. Pet. Ap. at 14) We regret that their disagreement with the Catholic Bishop has progressed to this high Court.

REASONS FOR DENYING THE WRIT

I.

THE DECISIONS BELOW ARE FULLY IN ACCORD WITH THE DECISIONS OF THIS COURT.

A. This Court fully treated the appropriate First Amendment standards for resolving church-property disputes only last Term in *Jones v. Wolf*, 99 S. Ct. 3020 (1979). *Wolf* held that states "may adopt *any* one of various approaches for settling church-property disputes" consistent with the First Amendment. 99 S. Ct. at 3025. Traditionally, Illinois Courts have looked to the polity analysis of *Watson v. Jones*, 13 Wall. 679 (1871) and *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976) to decide church-property disputes. In this case, the Illinois Courts applied the *Watson* polity analysis as well as the neutral principles of law analysis more recently explicitly endorsed by this Court in *Wolf*. Under either standard, the decisions below are correct.

1. *Wolf's Neutral Principles Analysis*. The Catholic Bishop of Chicago owns Sacred Heart Church in fee simple absolute. The Catholic Bishop's warranty deed reflects this, and petitioners have never disputed this fact. The Illinois Court quite rightly and expressly held that on the facts of this case petitioners have no property right, express or implied, to the church under Illinois

state law. (Cert. Pet. Ap. at 12a) Petitioners' Petition For Certiorari is tellingly silent on this point. Absent a property right in petitioners, the Catholic Bishop has an unfettered right to manage the property under Illinois law. *Funk v. Library Board of Reddick's Library*, 44 Ill. App. 3d 180, 357 N.E.2d 853 (3d Dist. 1976). Thus, "objective, well-established concepts of trust and property law familiar to lawyers and judges" require dismissal of petitioners' case. *Jones v. Wolf*, 99 S. Ct. at 3025.

2. *Watson's Polity Analysis.* The Roman Catholic Church is a hierarchical religious denomination, *Gonzales v. Roman Catholic Archbishop of Manilla*, 280 U.S. 1 (1929), and decisions respecting its internal governance are not reviewable in civil courts, *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 721-22 (1976) (holding ". . . that the reorganization of the Diocese [a hierarchical church in that case] involves matters of internal church government, an issue at the core of ecclesiastical affairs . . . ."). The Catholic Bishop, the fee owner of Sacred Heart, holds the ultimate authority and responsibility for the allocation of pastoral resources in the Archdiocese of Chicago under church law, and the First Amendment prohibits civil courts from interfering with his decision to close Sacred Heart.

B. Moreover, petitioners' Petition For Leave To Appeal in the Illinois Supreme Court waived "any and all prayers for relief as to the assigning of a priest and the maintenance of Sacred Heart as a church." (Cert. Pet. at 11 n.3) This waiver concedes petitioners' entire case. Any reading of petitioners' amended complaint and their papers in this Court makes clear that the warp and woof of this action is their plea to operate Sacred Heart as a church. Petitioners admitted as much in the trial court in Chicago when they asserted that "Plaintiffs' only interest lies in keeping Sacred Heart Shrine alive." (Memorandum in Response to Motion to Dismiss, C at 101) They could not change their theory on appeal in the Illinois courts, and they certainly cannot change their theory in this Court.

Petitioners' sweeping waiver does not cure the constitutional infirmity of their amended complaint in any event. If any of petitioners' prayers for relief remain, those prayers, in substance, either demand that petitioners be given the church property for their own religious purposes or that the State be given the property as a landmark property of some sort. If a civil court would ever order such relief, it would either be ordering—indeed sanctioning—a schism in the Roman Catholic Church or be taking the Bishop's property without due process and just compensation. Neither result is any more constitutional than petitioners' demand that the Bishop appoint a priest to serve them. *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969); *Canovaro v. Brothers of Order of Hermits of St. Augustine*, 326 Pa. 76, 191 A. 140 (1937); *Lutheran Church in America v. City of New York*, 35 N.Y.2d 121, 316 N.E.2d 305 (1974).

Accordingly, this case, which is before the Court on the barebones allegations of a complaint, presents no reason or record to rehash and restate constitutional principles that were canvassed in *Wolf* just nine months ago. As all three state courts found, the First Amendment bars the Illinois courts from asserting jurisdiction and hearing this case.

II.

INDEPENDENT AND ADEQUATE STATE GROUNDS SUPPORT THE ILLINOIS DECISION AND THERE IS NO JURISDICTION FOR THIS COURT'S REVIEW.

This Court will not review state court judgments that are supported by state law independent of the federal constitutional questions presented. *Murdoch v. Memphis*, 20 Wall. 590, 636 (1874). As this Court has long held:

> "The reason [for this rule] is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and Federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of Federal laws, our review could amount to nothing more than an advisory opinion." *Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945).

Petitioners must establish that they have a property right in Sacred Heart Church to even state a cause of action for extraordinary injunctive relief under Illinois law. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972) (property interests are creatures of state law). Throughout this litigation, petitioners have claimed property rights in the church under 1) the Illinois Religious Corporations Act, *Ill. Rev. Stat.* ch. 32, §§ 164 *et seq.*, 2) the landmark ordinances of the City of Chicago, *Municipal Code* ch. 21, §§ 21-62 *et seq.* and statutes of Illinois, *Ill. Rev. Stat.* ch. 24, §§ 11-48.2-1 *et seq.*, and 3) the Illinois common law of implied covenants and trusts. (The implied covenant claim was waived in

the Illinois Supreme Court. (Cert. Pet. at 11 n.3)) The Illinois Court carefully examined each of these state law claims and decided them against petitioners, concluding that they "have no protectible property rights in the church building." (Cert. Pet. Ap. at 12a)

This Court has no jurisdiction to review these determinations of state law. Because they are wholly independent of any federal questions and are in any case dispositive, this Court has no jurisdiction to review the judgment of the Illinois Court even if its resolution of the federal constitutional questions were in error. *E.g.*, *Wilson v. Loew's Inc.*, 355 U.S. 597 (1958) (dismissing certiorari as improvidently granted).

CONCLUSION

For all of the foregoing reasons, we respectfully submit that the Petition For A Writ Of Certiorari should be denied.

Respectfully submitted,

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